

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	CASE NO.	05-18752
)	CHAPTER	13
MICHAEL J. MILLER)	REG/spf	
LAUREL M. MILLER)		
)		
Debtor(s)			

DECISION AND ORDER
CONCERNING DEBTOR'S COMPLIANCE WITH § 109(h)

At Fort Wayne, Indiana, on December 22, 2005.

As a result of the bankruptcy reforms of 2005, to be eligible for relief under Title 11 an individual must have received credit counseling from an approved agency during the 180 days prior to filing the petition. 11 U.S.C. § 109(h)(1). This requirement may be waived, however, if the debtor files “a certification,” which “is satisfactory to the court,” describing “exigent circumstances” necessitating the immediate filing of a bankruptcy petition without waiting for the completion of credit counseling, and which “states that the debtor requested credit counseling . . . but was unable to obtain [it]” within five days. 11 U.S.C. § 109(h)(3)(A)(i-iii). The certification must be filed with the petition, see, Interim Bankruptcy Rule 1007(b)(3), (c), and it must state the facts demonstrating both exigent circumstances and the debtor’s efforts to obtain credit counseling “with particularity.” Fed. R. Bankr. P. Rule 9013. If the certification is satisfactory to the court, the debtor is then required to obtain credit counseling within the 30 days following the petition. 11 U.S.C. § 109(h)(3)(B).

The debtor in this case has failed to demonstrate that the eligibility requirements of § 109(h) have been fulfilled. Although the bankruptcy petition clearly instructs the debtor to indicate whether it received pre-petition credit counseling or is seeking a waiver of that requirement, and if a waiver is being sought to attach the required certification, the debtor has not done either of these things. The petition does not indicate that the debtor completed credit counseling prior to filing this case and there is no certification, of any kind, attempting to set forth facts that might justify a waiver of that requirement.

Based upon the present record the debtor is not eligible for relief under Title 11. Debtor shall file a certification demonstrating eligibility for relief under Title 11, which must fully comply with all of the requirements of § 109(h)(3), within fourteen (14) days. The failure to do so will result in the dismissal of this case without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court